IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9641 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHJI VIRJI THAKORE

Versus

STATE OF GUJARAT

Appearance:

MS SUMAN PAHWA for Petitioner as Amicus Curiae

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 22/03/2000

ORAL JUDGEMENT

#. The petitioner came to be detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by the District Magistrate, Banaskantha at Palanpur, on August 28, 1999.

#. The detaining authority took into consideration three offences registered against the detenue under Section 457 and 380 of Indian Penal Code. The detaining authority came to conclusion that the detenue is a "dangerous person". That resorting to less drastic remedy is not possible because he is required to be immediately prevented from pursuing his illegal and anti-social activities which are detrimental to public order. Therefore, the detention under the PASA Act is not the only remedy that can be resorted to.

#. The detenue petitioner made an application through jail which has been registered as Special Civil Application and treated as a petition under Article 226 of the Constitution of India. Ms. Suman Pahwa has been appointed to render services to the detenue. It has been contended by Ms. Pahwa that the order of detention is based on extraneous material not finding support from any cogent material. No affidavit-in-reply is filed by the detaining authority, and therefore, the petition may be allowed.

#. Mr. K.T. Dave, learned AGP has opposed this petition.

#. It transpires that the detaining authority took into consideration three offences registered against the detenue. The authority observed that the detenue has attained reputation of a dacoit and considering his activities, it is difficult to imagine how cruel and dangerous he is. Ordinary citizens are tired of him and are not even able to sleep during night and are not able to leave their houses unattended. The police department is also rendered sleepless and therefore, he is required to be detained. Mr. Dave, learned AGP was at loss to point out as to what could be the basis for the above observations of the detaining authority when only three offences registered against the detenue are considered. The offences relate to theft. There is no material to indicate any activity of "dacoit". There is nothing to indicate that the petitioner is indulged in the activities which are cruel and dangerous. There is nothing to indicate that the people are not able to sleep at night out of fear of the detenue and that they are not able to leave their houses unattended. Therefore, the material observations of the detaining authority on which the order is based are extraneous which reflect that the subjective satisfaction arrived at by the detaining authority cannot be said to be genuine and if that is so, the detention would be rendered bad in law. The

petitioner therefore, deserves to be allowed on this ground alone.

#. This Court places on record, the appreciation of services rendered by learned advocate Ms. Pahwa as Amicus Curiae.

#. The petition is allowed. The impugned order of detention dated August 28, 1999 is hereby quashed and set aside. The detenue - Rameshji Viraji Thakor, is hereby ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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